

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

APRIL SLY,

Petitioner,

Case Number: 17-10402
HON. SEAN F. COX

v.

ANTHONY STEWART,

Respondent.

_____ /

**OPINION AND ORDER DISMISSING PETITION FOR
WRIT OF HABEAS CORPUS WITHOUT PREJUDICE**

Petitioner April Sly (“Petitioner”), a Michigan state prisoner currently incarcerated at the Huron Valley Correctional Facility in Ypsilanti, Michigan, filed a *pro se* petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition is duplicative of a petition filed in this Court earlier this year and also assigned to the under-signed district judge. At the time she filed the first petition, Petitioner also sought a stay of the proceeding to allow her to exhaust several claims in state court. The Court granted Petitioner’s motion, stayed the proceeding, and administratively closed the case. *See* 2/15/17 Order, Case No. 17-10038, ECF No. 4. The stay was conditioned upon Petitioner presenting her unexhausted claims to the state courts within sixty days and moving to reopen this proceeding within sixty days of exhausting her state court remedies. *Id.*

The pending petition challenges the same conviction and raises the same claims raised in the earlier-filed petition. The Court cannot discern whether the pending petition

is an attempt to reopen the previous proceeding, initiate a new habeas corpus petition, or was filed in error. Because the petition is duplicative of the earlier-filed petition, the Court will dismiss the petition without prejudice. *See Davis v. U.S. Parole Commission*, No. 88-5905, 1989 WL 25837 (6th Cir. 1989) (a district court may dismiss a habeas petition when it is duplicative of an earlier-filed petition). To the extent that Petitioner wishes to abandon her unexhausted claims and proceed with the original petition, she should file a motion in the original case.

Accordingly, **IT IS ORDERED** that the petition for a writ of habeas corpus is **DISMISSED WITHOUT PREJUDICE**. Reasonable jurists would not debate the Court's conclusion that the petition should be dismissed without prejudice. The Court therefore **DECLINES** to grant a certificate of appealability under 28 U.S.C. § 2253(c)(2). *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Dated: March 23, 2017

s/Sean F. Cox

Sean F. Cox

U. S. District Judge

I hereby certify that on March 23, 2017, the foregoing document was served on counsel of record via electronic means and upon April Sly via First Class mail at the address below:

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s/J. McCoy

Case Manager